

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
LAMBDA COMMUNICATIONS, INC.)
)
Emergency Petition for)
Rulemaking to Apply Expanded)
Interconnection Obligations)
to the Puerto Rico Telephone)
Company)

RM No. _____

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EMERGENCY PETITION FOR RULEMAKING

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September 29, 1995

No. of Copies rec'd 0212
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Summary

The Puerto Rico Telephone Company ("PRTC"), the only local exchange carrier ("LEC") on the island of Puerto, has steadfastly refused to provide expanded interconnection, or any other accommodation for that matter, to Lambda Communications, Inc. so as to allow Lambda to provide interstate access services. PRTC has expressly hidden behind the fact that the Commission's rules exempt it from the expanded interconnection requirement. PRTC is the only Tier 1 LEC which enjoys such an exemption. This rule must be changed, and changed expeditiously, in order to stop this blatant anti-competitive conduct.

The continued exemption of PRTC from the Commission's expanded interconnection requirements can not be justified. PRTC should be subject to the same expanded interconnection obligations that have been applied to all other Tier 1 LECs. As the only Tier 1 LEC that is currently not subject the expanded interconnection requirements, PRTC hides behind its voluntary participation in the NECA pool to prevent interstate access competition in Puerto Rico. PRTC's voluntary participation in NECA interstate access charge pool is not an excuse for the exemption. The Commission's exemption of PRTC was clearly an administratively convenient byproduct of its exemption of all LECs that participate in the NECA pool. PRTC's exemption must be revisited.

In this petition, Lambda asks the Commission to commence a rulemaking proceeding at the earliest possible time looking toward eliminating the provision of its expanded interconnection rule which exempts PRTC from the expanded interconnection requirements

applicable to every other large (i.e. Tier 1) local exchange carrier. Lambda plans to construct a fiber optic local access network in Puerto Rico in order to provide switched and special access services, including interstate access, in Puerto Rico to consumers and to interexchange carriers. Like all other competitive access service providers, Lambda needs to be able to interconnect its network facilities at LEC central offices in order to provide competitive access services between those central offices and interexchange carrier points of presence. Lambda has repeatedly requested such interconnection from PRTC and every request has been denied by PRTC on the basis that it, as participant in the NECA access pool, is exempt from the Commission's requirements.

PRTC does not need or deserve special treatment. In the past, PRTC has held up the low telephone penetration rate in Puerto Rico relative to such rates in the various states as the primary excuse why it should be protected from competition. PRTC has been owned by the government of the Commonwealth of Puerto Rico for 21 years. Given the small size of Puerto Rico, its predominantly urban nature and its very high population density, it is unclear why this telephone penetration rate is not higher. If the low penetration rate is the result of Puerto Rico having a lower per capita income than any of the states, why then are PRTC's local telephone rates approximately 42 percent higher than the average local telephone rate in the United States. If PRTC's rates are so high because it has a high cost per loop, then why does it have such a high cost per loop? Certainly not because Puerto Rico is rural since in

reality it is 71 percent urban and certainly not because Puerto Rico is sparsely populated since it has a greater population density than any of the states. It is because PRTC labors with its own gross inefficiencies and a skewed sense of priorities.

The Commission should not accept a plea from PRTC that, after 21 years, it needs continued protection from competition in order to address a low telephone penetration rate when (a) it expends great sums of money on its facilities in order to become the first fully digital telephone network in the United States, to develop an extensive island-wide cellular system, to upgrade an island-wide paging system, to build an advanced video dial tone network, and to acquire and install of an island-wide PCS system; and (b) it is able to exploit unique financial and other advantages as a result of being owned by the government of the Commonwealth.

The answer to PRTC's telephone penetration and universal service woes is not to continue to deprive the residents of Puerto Rico of the benefits of interstate access competition. PRTC's efforts at improving telephone penetration and achieving its universal service goals in Puerto Rico should be focused on fully participating in the Commission's high cost assistance programs, improving its efficiency and charging affordable basic telephone rates.

Therefore, for all of the reasons stated in the petition, the Commission should commence a rulemaking proceeding for the purpose of eliminating PRTC's exemption from the expanded interconnection requirements.

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To: The Commission

EMERGENCY PETITION FOR RULEMAKING

Lambda Communications, Inc. ("Lambda"), by its attorneys, herein petitions the Commission to expeditiously issue a notice of proposed rulemaking to amend Section 64.1401 of its rules¹ in a manner that applies expanded interconnection requirements currently applicable to all other Tier 1 local exchange carriers (LECs) to the Puerto Rico Telephone Company ("PRTC").² As discussed below,

¹47 C.F.R. §§ 64.1401 - 64.1402. See Expanded Interconnection with Local Exchange Carrier Facilities, Report and Order, 7 FCC Rcd 7369 (1992), Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7341 (1993), Order on Reconsideration, 9 FCC Rcd 5154 (1994), vacated in part, remanded in part, Bell Atlantic Tel. Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) ("Expanded Interconnection").

²As recently described by the Commission in Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Switched Transport Services, CC Docket No. 93-162, Order, DA95-1966 (CCB, September 13, 1995):

Expanded interconnection is a LEC offering that enables parties, by interconnecting their circuits with those of the
(continued...)

the Commission's decision to exempt PRTC from the expanded interconnection requirements in CC Docket 91-141 must be revisited.

INTRODUCTION

Lambda is a wholly-owned subsidiary of Centennial Cellular Corp., a publicly held company engaged in the provision of wireless telecommunications. Lambda intends to provide both interstate and intra-island access and transport services in Puerto Rico.³

In order to offer a full complement of access services, including interstate access services, Lambda must be allowed to interconnect its network facilities with those of PRTC -- the

²(...continued)

LEC at a LEC central office through either physical or virtual collocation, to compete on a facilities basis with certain LEC access services. Physical collocation is an offering that enables an interconnector to locate its own transmission equipment in a portion of the LEC central office. The interconnector pays the LEC a tariffed charge for the use of the central office space, and may enter the central office to install, maintain, and repair the equipment. Virtual collocation is an offering in which the LEC owns (or may lease) and exercises exclusive physical control over the transmission equipment located in the central office that terminates the interconnector's circuits. The equipment, designated by the interconnector, is dedicated to the interconnector's exclusive use. The LEC provides installation, maintenance, and repair of the equipment on a nondiscriminatory basis. Both virtual and physical collocation enable the interconnector-designated equipment to interconnect with the LEC's equipment located in the LEC's central office. Expanded Interconnection with Local Telephone Facilities, CC Docket No. 91-141, Notice of Proposed Rulemaking and Notice of Inquiry, 6 FCC Rcd 3259, 3262 (1991).

³On December 4, 1994, the Puerto Rico Public Service Commission authorized Lambda to provide intra-island private line service. In re: Lambda Communications, Inc., Resolution and Order, CSP-95-001-FRT (Dec. 21, 1994). This service involves neither interconnection with nor access to the PRTC network.

incumbent monopoly provider of local exchange and exchange access services in Puerto Rico. Today, all Tier 1 local exchange carriers ("LECs") except for PRTC are required by the Commission's expanded interconnection rules to provide such interconnection.⁴

As will be explained more fully in this emergency petition, Lambda has repeatedly requested that PRTC provide such expanded interconnection. Every Lambda request has been unequivocally denied by PRTC, which has hidden behind the fact that, as a participant in the National Exchange Carrier Association ("NECA") interstate access charge pool, it is not required to comply with the Commission's expanded interconnection (or "collocation") policies and requirements. So long as PRTC continues to be exempted from the expanded interconnection obligations applicable to every other Tier 1 LEC, the business and residential consumers of Puerto Rico will be denied the benefits of local access competition which is at the heart of the Commission's competition policy.

PRTC is the only Tier 1 LEC in the NECA pools. As explained below, the Commission's 1992 decision to allow PRTC to escape the expanded interconnection obligations imposed on all other Tier 1 LECs was based on the absence of vigorous opposition to PRTC's requested exclusion at the time rather than on a reasoned analysis based on the record. In fact, there has never been any finding by

⁴A Tier 1 LEC is one whose gross annual interstate revenues exceed \$100 million. The Commission has used \$100 million as a dividing line for a number of regulatory purposes. See, e.g., 47 C.F.R. §§ 32.11, 43.21, 43.22, 43.41, 43.43 and 64.903.

the Commission that any special circumstances warranted PRTC's exclusion from requirements applicable to all other Tier 1 LECs. It is now abundantly clear that such disparate treatment should no longer be tolerated. PRTC has undertaken a concerted effort to thwart not only local competition, but intra-island and interstate access competition as well.

In this petition, Lambda will show that there is no rational basis for distinguishing PRTC from all other Tier 1 LECs, thereby indefinitely consigning Puerto Rico to a single service provider. Because there is no rational basis for regulating PRTC differently, the Commission must change the rules so that PRTC is required to provide special access and switched transport collocation. PRTC must no longer be permitted to use its NECA pool participation as a shield to avoid the public interest obligations of every other Tier 1 LEC.

I. NATURE OF THE EMERGENCY

PRTC has continuously frustrated and suppressed Lambda's attempts to introduce competition to intra-island and interstate communications in Puerto Rico. While vigorously opposing Lambda's provision of intra-island private line (*i.e.*, dedicated) communications in the local regulatory arena,⁵ PRTC has flatly

⁵Citing its statutory status as a monopoly provider of telecommunications service on the island, PRTC has challenged the legality of the Puerto Rico Public Service Commission's award of a CPCN to Lambda. See In re: Lambda Communications, Inc., Legal Memorandum of PRTC, CSP-95-001-FRT (June 13, 1995).

denied Lambda's requests for interconnection needed for the provision of its interstate communications service.

The primary interstate communications services that Lambda wants to provide involves; (a) the delivery of unaggregated interexchange carrier ("IXC") traffic from IXC points of presence ("POPs") or IXC-designated locations to PRTC's Caparra Tandem Office, coupled with the pickup of the aggregated IXC traffic at the Tandem Office and the delivery of that traffic to IXC facilities at the Isla Verde Cable Station;⁶ and (b) the pickup of aggregated IXC traffic from the IXC facilities at the Isla Verde Cable Station and the delivery of that traffic to the Tandem Office coupled with the pickup of the disaggregated IXC traffic at the Tandem Office and the delivery of that traffic to IXC POPs or IXC-designated locations. These arrangements would enable Lambda to provide interstate access transport between LEC central offices and IXC points of presence in competition with PRTC, as competitive

⁶The Isla Verde Cable Station serves as the entry point in Puerto Rico to the Taino Carib Fiber Optic Cable System, a high capacity underwater cable that provides a digital link between Puerto Rico, the U.S. Virgin Islands and Tortola. This cable system interconnects other regional submarine cable systems, establishing direct routes with different countries in the eastern Caribbean, South America and Europe. The Isla Verde Cable System will also serve as the entry point in Puerto Rico to the future Antilles I submarine cable between Puerto Rico and the Dominican Republic. See PRTA 1994 Annual Report at 31.

All of the major IXCs have located their facilities at the Isla Verde Cable Station in order to facilitate access to the Taino Carib Fiber Optic Cable System. Similarly, PRTC has located facilities there in order to provide transport of this IXCs' traffic to the PRTC network. The Isla Verde Cable Station is owned by PRTC and is managed by Isla Verde Telecommunications Corporation ("IVTC"), another wholly-owned subsidiary of PRTA. Id.

access providers are permitted to do in competition with all other Tier 1 LECs.

Thus, in order to provide its interstate communications service, Lambda needs to interconnect its fiber optic facilities with the PRTC network at the Caparra Tandem Office and it needs equipment space at the Isla Verde Cable Station in order to connect its facilities with those of IXC's located there. Since the beginning of 1995, Lambda has repeatedly requested both interconnection and equipment space. PRTC has totally denied Lambda's requests, citing its exemption from the expanded interconnection requirements. Lambda has time-sensitive contracts with IXC's to provide its services to them but finds itself unable to perform because of PRTC's denials. PRTC obviously has done and will do whatever it takes to preclude the advent of competition on the island. Lambda therefore requests immediate and expedited action on this rulemaking request.

II. GENESIS OF PRTC'S EXEMPTION FROM EXPANDED INTERCONNECTION

In its Expanded Interconnection Notice of Proposed Rulemaking, the Commission tentatively found that its collocation and unbundling policies should apply to all Tier 1 LECs but not to any Tier 2 LECs. The purpose of this distinction was to "ensure that the smaller LECs are not subject to any undue hardship that might result from the imposition of expanded interconnection requirements in their more often isolated markets" (emphasis added).⁷

⁷Expanded Interconnection, 6 FCC Rcd at 3264.

Alternatively, the Commission suggested limiting its requirement to urban and suburban areas based on population density or number of access lines per exchange, thereby distinguishing among LECs based on the demographics of their service areas rather than their size.⁸

In deciding to apply its expanded interconnection requirements to all Tier 1 LECs except NECA pool members, the Commission adopted the most obvious and convenient demarcation between groups of LECs.⁹ The Commission explained the exclusion of the NECA pool members as follows:

[a]t this time, we are not convinced that it would be beneficial to require a [NECA] pool carrier, which has limited pricing flexibility, to provide expanded interconnection. It might cause that member's contribution to the pool to decrease, put upward pressure on the pool's access rates, reward less efficient CAPs,

⁸In its comments, filed August 6, 1991, PRTC offered two lines of argument to justify excluding it from the special access collocation requirement. First, PRTC contended that LECs participating in the NECA pool should not be required to offer collocation because pool participants could not respond to access competition by altering their special access rates. This view was identical to that of other NECA pool members. Second, responding to the Commission's alternative approach to exclude sparsely populated service areas, PRTC argued that Puerto Rico's "special circumstances" justified PRTC's exclusion from the collocation requirement. Among the special circumstances cited were Puerto Rico's "developing economy," its relatively low per capita income, and its high unemployment. PRTC contended that Puerto Rico's universal service goals would be jeopardized by "any reduction in PRTC's revenues, and any increases in its unit costs or stranded plant due to decreases in facilities utilization." Expanded Interconnection with Local Exchange Carrier Facilities, PRTC Comments ("PRTC Comments") (Aug. 6, 1991) at 5. The Commission did not rely upon this "special circumstances" argument in exempting PRTC. In any event, these arguments were made more than four years ago.

⁹Expanded Interconnection, 7 FCC Rcd at 7398.

and cause the pool carriers' ratepayers to bear the burden of stranded plant.¹⁰

The Commission addressed the PRTC anomaly by stating that "[s]ince the Puerto Rico Telephone Company is the only Tier 1 LEC that is also a NECA pool member, this is not much more restrictive than requiring all Tier 1 LECs to provide expanded interconnection."¹¹ In other words, the exemption of PRTC from the expanded interconnection requirements was not based on any Commission determination of special circumstances that warranted treatment of PRTC different from all other Tier 1 LECs. Rather, the exemption appears to have been allowed by the Commission at the time as a "de minimis" exception to the expanded interconnection rule. As will be explained in this petition, however, that exception is not "de minimis." It is a major exception, the effect of which is to deny the benefits of access competition to one of the nation's most populous areas.

In fact, the Commission made it clear that it "will not exempt Tier 1 LECs from providing expanded interconnection in sparsely populated areas."¹² The Commission simply appeared to assume that no dire consequences at that time would materialize from its decision to permit PRTC to continue to align itself with the much smaller NECA pool members rather than the Tier 1 LECs with which PRTC was more properly identified, especially since, at that time,

¹⁰Id.

¹¹Id.

¹²Id.

the Commission had no basis to perceive any demand for expanded interconnection in Puerto Rico.¹³ The Commission did, however, state that it "may revisit this decision to exclude NECA pool members after we have an opportunity to observe the effect of expanded interconnection on other LECs."¹⁴ The special access expanded interconnection tariffs have now been in effect for more than two years with no discernible adverse consequences for the LECs. Lambda believes that the time has come for the Commission to extend those requirements to the only Tier 1 LEC not presently subject to them -- PRTC.

Although the arguments in support of requiring even the smaller carriers to provide switched transport collocation were more compelling than those supporting special access collocation, the Commission reached an identical conclusion: only the Tier 1 carriers (except PRTC) would be required to offer switched transport collocation.¹⁵ The Commission's discussion regarding switched access interconnection was perfunctory -- a single paragraph. However, as in the case of its earlier special access interconnection decision, the Commission held out the prospect of revising its policy: "we believe that we should gain experience with expanded interconnection in Tier 1 service areas served by

¹³PRTC conceded that San Juan was a major metropolitan area but observed that no CAP had yet asked for expanded interconnection. PRTC Comments at 3. Of course, in August 1991, when PRTC filed its Comments, the CAPs were only beginning to deploy their facilities in markets much larger than San Juan.

¹⁴Expanded Interconnection, 7 FCC Rcd at 7398.

¹⁵Expanded Interconnection, 8 FCC Rcd at 7399-7400.

non-NECA members before considering the extension of this requirement."¹⁶ Expanded interconnection for switched transport became effective on December 29, 1993 without any discernable adverse consequences for the LECs.¹⁷

III. PRTC DOES NOT NEED OR DESERVE SPECIAL TREATMENT

Given its size and unique advantages and the nature of the Puerto Rican market, PRTC's continued exemption from the expanded interconnection requirements is unjustifiable. That exemption should be promptly terminated, whether or not PRTC elects to withdraw from the NECA pool. The NECA pool is intended to benefit small high cost companies.¹⁸ PRTC is a very large high cost company whose presence in the pool burdens millions of interstate ratepayers, particularly those of the 22 non-pooling LECs who contribute \$364 million in Long Term Support for the common line pool.¹⁹ Whether or not PRTC chooses to remain in the NECA pool, that voluntary decision must not be allowed to dictate the anomalous exemption of PRTC from the Commission's expanded interconnection obligations, and the continuing denial to Puerto

¹⁶Id.

¹⁷See In the Matter of Local Exchange Carrier Switched Transport Restructure Tariffs, Order, 9 FCC Rcd 400 (1993).

¹⁸MTS and WATS Market Structure, Report and Order, 2 FCC Rcd 2953, ¶ 24 (1987), reconsideration, 3 FCC Rcd 4543, 4548, n. 16 (1988).

¹⁹Monitoring Report ("Monitoring Report"), CC Docket No. 87-339, (May 1995), at Table 7.3.

Rico's business and residential consumers of the benefits of access competition.

The exemption of PRTC from the expanded interconnection rules can not be justified by the characteristics of Puerto Rico and/or PRTC itself. Puerto Rico is not the rural, sparsely populated island that PRTC has characterized in the past. Moreover, the relatively low telephone penetration rate in Puerto Rico is, in large part, a function of PRTC's inefficiency and skewed set of priorities rather than uncontrollable factors. PRTC is a large, highly profitable enterprise that enjoys unique advantages that other LECs do not have, such as having its intra-island operations regulated by its direct parent, PRTA, and having access to low cost public financing unavailable to any other Tier 1 LEC.

A. Puerto Rico

PRTC's worn portrayal of Puerto Rico as a rural, sparsely populated area incapable of supporting competition is inaccurate and misleading. In fact, competition in telecommunications will stimulate Puerto Rico's growth as a commercial center for the Caribbean area. While it is true that Puerto Rico's per capita income is relatively low and its unemployment rate relatively high, it is not true that Puerto Rico is particularly rural or poor overall. Neither does it follow that Puerto Rico's economic condition should justify continuing to exclude Puerto Rico from the economic stimulative benefits brought about by development of a competitive telecommunications infrastructure -- of which

competitive interstate access service availability is a critical component.

Puerto Rico is a small island, approximately 110 miles long by 35 miles wide, making it smaller than every state except Rhode Island and Delaware. With a population of 3.812 million and a land area of 3,427 square miles,²⁰ Puerto Rico has a population density of 1,112 persons per square mile - which is greater than the population density of every state and is more than 15 times the population density of the United States as a whole (73 persons per square mile).²¹ In fact, the lowest population density among Puerto Rico's 78 "municipios" is 133 persons per square mile - which is higher than the average population density of the United States as well as the population density of 32 states!²² Overall, Puerto Rico is 71.2 percent urban and 28.8 percent rural.²³ It has five communities -- San Juan, Bayamon, Ponce, Caguas and Mayaguez - - with more than 100,000 population. Only 26 states have larger populations, and only 20 are more urbanized.²⁴ PRTC's claim that the rural nature of Puerto Rico is a cause of its high cost per loop is entirely without foundation.

²⁰Central Intelligence Agency, The World Factbook 1995 (1995) at 346.

²¹Statistical Abstract of the United States ("Statistical Abstract") (114th ed. 1994) at 28, 833.

²²Id. See also Bureau of the Census, Estimates of the Resident Population of Puerto Rico Municipios, July 1, 1993 and Components of Change Since 1990 (1995).

²³Statistical Abstract at 833.

²⁴Id. at 43.

Puerto Rico's reported low per capita income relative to the states is very misleading. A sizable portion of additional income "comes from a vigorous underground economy, which has been estimated at one-third of the gross [state] product."²⁵ Puerto Rico's gross state product of \$24.991 billion ranks it above 13 states.²⁶ In fact, PRTC's reliance on Puerto Rico's relatively low per capita income to support its professed need for continued protection from interstate access competition is belied by the very high basic telephone rates that PRTC charges.²⁷

Indeed, the dramatic growth of cellular telecommunications service in Puerto Rico demonstrates that the Puerto Rico economy can -- and does -- support innovative and competitive telecommunications services. The island's population fully supports two successful cellular carriers, one of which is owned by PRTC. In fact, the \$151 million Puerto Rico cellular telephone market ranks ninth in the world in market penetration with more than 200,000 cellular subscriber units on line.²⁸ Lambda submits that it is no mere coincidence that even limited competition in the cellular telephone industry in Puerto Rico achieves greater relative service penetration than PRTC's telephone service.

²⁵American Demographics, "The Spending Power of Puerto Rico", (April, 1991), at 47. Consumer expenditures on the island outstrip disposable income by \$1.7 billion, or 9 percent of all spending. Id.

²⁶Statistical Abstract at 449, 836.

²⁷See Section IV.A infra.

²⁸San Juan Star, "P.R. Pushes for Top Spot in Worldwide Cellular Use" (May 1, 1995), Business Outlook at B 30.

Moreover, two privately-owned companies, including the parent of Lambda, each recently paid approximately \$55 million for the broadband Personal Communications Service A and B block licenses for the Puerto Rico-U.S. Virgin islands Major Trading Area. Obviously, Puerto Rico continues to be viewed as a very attractive communications market -- a market where private entities stand ready, willing and able to invest substantial sums in anticipation of the opportunity to earn profits without being the beneficiaries of special federal government protections and favored treatment.

B. PRTC Is More Than Twice The Size Of Any LEC That Is Exempt From Expanded Interconnection And Larger Than Many Of The Tier 1 LECs Which Are Subject To Expanded Interconnection

PRTC presents itself as "a high tech, modern, and fully digitized telecommunications company, the sole provider of local and intra-island long distance services in Puerto Rico."²⁹ According to its own statements, "PRTC is the 12th largest telecom system in the United States."³⁰ It has \$2.3 billion in assets and nearly \$1 billion in revenues, making it the 10th largest local exchange carrier on a holding company basis - larger than such other major Tier 1 LECs as Cincinnati Bell and Rochester Telephone Corporation.³¹

²⁹PRTA 1994 Annual Report at inside cover page.

³⁰Institutional Investor, Special Sponsored Section "PRTC; Puerto Rico's Telephone Company moves Into the Future" (June, 1995) at S19.

³¹Federal Communications Commission, Preliminary Statistics of Communications Common Carriers (December 31, 1994), at Table 2.1.

PRTC has 1,118,356 access lines,³² making it the 28th largest local exchange carrier.³³ PRTC is comparable in size to, or larger than (in some case far larger than), the largest telephone company in twenty-five states.³⁴ PRTC's 1,057,458 local loops (in 1993) rank it 35th in loops per study area among the 105 Tier 1 study areas.³⁵ It ranks even higher -- 31st -- in unseparated NTS revenue requirement.³⁶ PRTC reported an unseparated non-traffic sensitive ("NTS") revenue requirement for 1993 of \$354 million and total access minutes of more than 1.4 billion.³⁷ Significantly, only five of the 34 LECs with more loops, and only four of the 30 LECs with a greater revenue requirement, are not Bell Operating

³²Id. at Table 2.9.

³³Monitoring Report at Table 4.19.

³⁴Alaska, Arkansas, Delaware, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, West Virginia and Wyoming. Id. at Table 3.9.

³⁵Monitoring Report at Tables 3.9 and 3.12. A study area is all of a LEC's operations within a single state.

³⁶Id.

³⁷Id. at Tables 3.11, 4.14. The unseparated non-traffic sensitive ("NTS") revenue requirement is the amount reported to NECA for purposes of the Universal Service Fund ("USF"), which is administered by NECA. Based on that revenue requirement, PRTC's NTS revenue requirement per local loop was \$334.83 in 1993, resulting in a USF payment of \$14 million. Id. at Tables 3.9, 3.14. Although many of the very small Tier 2 companies had a higher revenue requirement, only eight jurisdictions, including Virgin Islands and Micronesia, exhibited a higher "statewide" average revenue requirement per loop. As explained, infra, this high revenue requirement is more attributable to PRTC's inefficient, high-cost operation than any characteristics of the Puerto Rican market.

Companies. Thus, PRTC by these measures is the fourth or fifth largest telephone company in the United States that is not a Bell affiliate. Based on its revenues, PRTC is the 22nd largest telephone company in the United States.³⁸ Every other LEC of comparable size is subject to the expanded interconnection requirements.

Compared to all other NECA pool members, PRTC is enormous in size. PRTC's 1,118,356 access lines are almost four and one half times the number of access lines of the largest Tier 2 company, Central Telephone Company of Virginia ("Centel-Virginia").³⁹ Centel-Virginia had only 42 percent of PRTC's interstate access minutes and only 22 percent of its unseparated, non-traffic sensitive revenue requirement.⁴⁰ PRTC's nearly 8,000 full-time employees are 10 times the number of employees of the next largest Tier 2 LEC.⁴¹ PRTC's annual operating revenues of almost \$1 billion are 5.6 times the annual operating revenues of the next largest Tier 2 LEC.⁴²

³⁸Id. at Table 2.1.

³⁹PRTC is by far the largest LEC exempt from these requirements. Centel Virginia serves only 250,819 access lines and 239,875 loops in its study area. Preliminary Statistics of Communications Common Carriers at Table 2.10; Monitoring Report at Table 3.9.

⁴⁰Monitoring Report at Table 3.9, 4.14.

⁴¹Preliminary Statistics of Communications Common Carriers at 2.9.

⁴²Id. at 2.1. In addition, it is noteworthy that Citizens Telephone Co. of California, which petitioner believes to be the second largest NECA participating carrier, has 7.2 % of the
(continued...)

C. Despite PRTC's Assertions About The Puerto Rico Economy, PRTC Has Spent Millions Of Dollars To Upgrade Its Network And Expand Its Service Offerings

PRTC has repeatedly used the relatively low telephone penetration rate and the relatively low per capita income in Puerto Rico as an excuse to avoid being required to comply with regulations that are applicable to all other telephone companies of similar size. Yet, despite its assertions of poverty and its stated need for exceptional treatment, PRTC has spent and continues to spend millions of dollars making its telephone network "one of the most technologically advanced" in the United States.⁴³ Lambda submits these are highly questionable priorities which only serve to contradict PRTC's asserted need for special treatment.

As recently reported in a special sponsored section in Institutional Investor, a major financial trade publication:

In telecommunications, the public sector Puerto Rico Telephone Company (PRTC) completed a \$17 million fiber-optic loop around the island and through the interior in 1994. PRTC, the 12th largest phone company in the United States, also has 100 percent digital central offices, an integrated service digital network (ISDN), an island-wide emergency 911 service, and high quality video conferencing services. In the next four years, PRTC will invest \$1.3 billion in capital improvements that include additional access lines in rural areas and building its cellular network. "It's truly a new era in telecommunications in Puerto Rico," says Agustin Garcia, president of PRTC. "Because we are a government-owned

⁴²(...continued)
access lines of PRTC (85,263), 10% of the employees of PRTC (800 full time employees), and only 12% of the annual operating revenues of PRTC (approx. \$120 million). Id.

⁴³Institutional Investor, A Special Sponsored Section; "PRTC; Puerto Rico's Telephone Company Moves Into The Future" at S19.

corporation, we understand our responsibility to ensure that the public interest is well served."⁴⁴

Government ownership has allowed PRTC to reinvest all of its profits in telecommunications infrastructure, making it the first U.S. company of its size to become 100 percent digital in all central offices. In 1994, PRTC inaugurated a \$17 million fiber optic loop around the island. It invested another \$30 million in "signaling seven" technology, allowing custom local area signaling services (CLASS) and integrated-service digital network (ISDN). In the next five years, PRTC will undertake a \$1.3 billion capital improvement program financed 100 percent by internally generated funds.⁴⁵

In addition, PRTC is investing heavily in wireless technologies. It has a large island-wide cellular system consisting of two Mobile Telephone Switching Offices, 67 cell sites (12 added in 1994) and 17 repeaters (5 added in 1994) serving 109,217 cellular subscriber units.⁴⁶ PRTC has announced its intention to convert its cellular system from analog to digital. Its island-wide paging network was totally replaced at the beginning of 1994.⁴⁷ Also, PRTC has publicly indicated that it intends to purchase a broadband PCS license at auction in 1995.

⁴⁴Institutional Investor, A Special Sponsored Section; "Infrastructure, Building for the Future", (June, 1995) at S18. It is ironic that PRTC claims to be particularly imbued with public interest considerations by virtue of being government-owned yet charges the residents of Puerto Rico by far the highest rates in the United States for basic telephone service. See Section IV.A. infra.

⁴⁵Institutional Investor, A Special Sponsored Section; "PRTC; Puerto Rico's Telephone Company Moves Into the Future"; at p. S19.

⁴⁶PRTA 1994 Annual Report at 17-18.

⁴⁷Id.

Finally, PRTC is spending millions of dollars on a video dial tone trial in Puerto Rico.⁴⁸

As described above, these tremendous expenditures reflect a misguided sense of priorities when viewed in the context of (a) PRTC's use of a low telephone penetration rate as an excuse for being exempted from the expanded interconnection obligations that apply to all other Tier 1 companies; (b) PRTC's public espousal of the goal of Universal Service; and (c) PRTC's high rates for basic local exchange telephone service. This information belies the picture of PRTC painted by PRTC in previous Commission proceedings as a telephone company unable to modernize and in need of regulatory protection from competition because of the unique costs and economic circumstances of its service area.

D. PRTC's Unique Status As a Government-Owned LEC Affords it Significant Advantages Which Offset Any Asserted Disadvantages Warranting Special Treatment

As a wholly-owned subsidiary of an instrumentality of the Commonwealth of Puerto Rico, PRTC enjoys a multitude of benefits and advantages not available to any other telephone company in the United States. These advantages enable PRTC to operate on a solid financial footing, to have access to sufficient capital to fund \$1.3 billion in capital improvements, and to provide PRTC with the opportunity to respond to competition while providing the (unfulfilled) opportunity to provide universally affordable service.

⁴⁸See Puerto Rico Telephone Company, Order and Authorization, 10 FCC Rcd 156 (CCB 1994).